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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,062	01/04/2002	Stephen A. Milks	8416-000008	5754

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W. R. Duke Taylor  
Harness, Dickey & Pierce, P.L.C  
P.O. Box 828  
Bloomfield Hills, MI 48303

EXAMINER

FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/038,062

Applicant(s)

MILKS, STEPHEN A.

Examiner

Charles G. Freay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5, 7-11, 13-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7, 8, 10, 11, 13-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 9 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This office action is in response to the Appeal Brief of January 4, 2006. Upon review of the Appeal Brief the examiner noted that the Real Party in Interest in the current application is Fan-Tastic Vent Corp.. The examiner reviewed the Fan-Tastic Vent Corp. web-site and discovered a product brochure for the MODEL 4000R fan. The product brochure in combination with the applicant's earlier U.S. Patent No. 4,633,769, make obvious and directly address most of the argument's made by the applicant in the Appeal Brief. In view of the newly discovered references, which teach of the applicant's previous work, the examiner has reopened prosecution. As noted below Supervisory Patent Examiner Ehud Gartenberg has approved reopening prosecution. The examiner notes that the references were not cited by the applicant in an Information Disclosure Statement nor cited by either of the previous examiners that worked on this application.

While not acquiescing to any of the applicant's arguments set forth in the Appeal Brief the examiner has withdrawn the rejections set forth in the Final Rejection in favor of the rejections set forth below. This was done because the newly discovered references clearly show that the applicant's prior work addresses many of the applicant's arguments set forth with regards to the references applied in the Final Rejection of June 2, 2005.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 recites the limitation "associated motor bearings" in line 2.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Chiu (USPN 5,110,263).

Chiu discloses an air circulation device (11) comprising a housing (12,14) having a front face portion (16), a rear face portion (17) and a main base portion (the four side walls 18, 19), the base having a motor and a fan blade. The fan blade is clearly shown in the figures and a motor is inherent since the electric fan requires a drive mechanism. As shown in Fig. 1 there is a bottom face (19) including elongated support members (52) pivotally secured and manually positioned to the bottom face by a fastening member (53). The examiner notes that the final wherein clause, "wherein the elongated support portion is pivotally...", merely states the result of limitations in the claim and adds nothing to the patentability or substance of the claim. See *Texas Instruments Inc. v. International Trade Commission*, 26 USPQ2d 1010 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57

USPQ2d 1747 (fed. Cir. 2001). Since all of the structural limitations of the claim are met and the manually positioned and pivoted members (52) operate in the same manner Chiu teaches of the structure and is capable of operating in the same manner.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan-Tastic Vent Model 4000R brochure (herein after 4000R) in view of the applicant's earlier patent (USPN 4,633,769) (herein after ('769)).

4000R discloses an air circulation device (referred to as an air exchange system in 4000R), having a housing assembly with a motor and a fan blade (clearly shown in the figure). The motor is a 12 Volt sealed motor and the thickness of the assembly is 3.5 inches. 4000R further discloses an elongated support portion (the flange extending around the housing assembly) as part of the base. 4000R does not specifically state that the motor is a thin low profile motor having a thickness of around 1 inch and that there are bearings. 4000R does make reference to the applicant's earlier Patent # 46333769. ('769) discloses a low profile motor (referred to as a disk motor 15). At col. 2 lines 45 thru 47 ('769) incorporates by reference U.S. Pat. No. 3,144,574 to Henry-Baudot. The Henry-Baudot reference, and thus the applicant's earlier patent ('769) by

incorporation, discloses that the disk motor includes bearings (21, 21'). At col. 1 lines 60-64 ('769) notes that a reduced thickness assembly is desired. Further at col. 3 lines 23-25 ('769) notes that the "motor and fan blade require less than 2 1/2 inches". Figure 2 of ('769) is included below and shows the view of the housing assembly, the motor and fan blade.

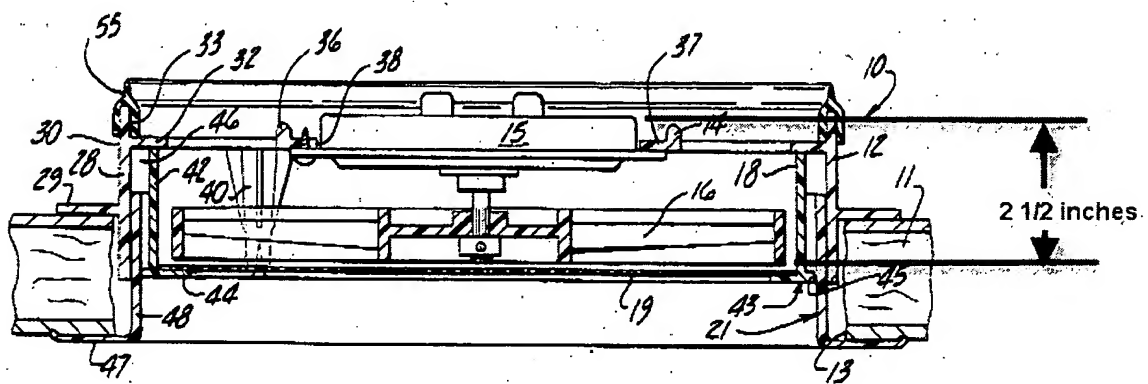


Fig - 2

As shown above, the disk motor (15) represents the low profile motor driving a fan blade (16), the housing assembly includes a base portion (18), a front face portion (32) and a rear face portion (43,44).

At the time of the invention it would have been obvious to one of ordinary skill in the art, when reviewing the 4000R brochure, to refer to the ('769) patent in view of the clear reference to this patent on the brochure. Further upon review of the ('769) patent, which clearly discloses an air circulation device of similar construction to 4000R, it would have been obvious to substitute or use the sealed low-profile motor as the drive devise for the fan as a well known reduced thickness motor. It also would have been

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obvious to use the housing assembly, disclosed in detail in ('769), including a front face portion, a main base portion and a rear face portion, as the housing which is shown in the photograph of 4000R. Such a housing provides a reduced thickness enclosure for the fan and motor. Additionally, it would have been obvious to one of ordinary skill in the art to make the motor of a thickness of "around 1 inch". As shown in Fig. 2 the motor and fan are around 2.5 inches and thus the motor alone would have a greatly reduced thickness relative to 2.5 inches, on the order of "around 1 inch". The examiner notes that "it is well settled in the art that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art", In Re Aller, 105, USPQ 233 such that one of ordinary skill in the art would have been able to correctly size the thickness of the motor based on the power and space requirements of the 12 volt motor fitting within a reduced thickness.

With regards to claim 1 the examiner notes that the sealed motor disclosed by 4000R and ('769) has the ability to perform the intended use limitation of the sealed motor "creating a liquid impermeable seal enabling.....while preventing corrosion and damage" .

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over 4000R in view of the applicant's prior patent ('769) as applied to claim 1 above, and further in view of Schmider (USPN 5,109,171).

As set forth above 4000R in view of the applicant's prior patent ('769) substantially discloses the invention. While each of 4000R and ('769) certainly disclose

rigid casings neither specifically state that the casing is "of a rigid, non-corrosive material...". The applicant at paragraph [0019] line 3 of the current specification sets forth that such a material is metal. Schmider discloses a disk motor of similar construction to the Henry-Baudot patent incorporated by reference in ('769). Schmider at col. 1 lines 12-14 states that such disk motors are routinely enclosed by sheet metal. At the time of the invention it would have been obvious to use sheet metal as a well known and relatively cheap rigid and non-corrosive material for a motor housing.

Claims 1, 2, 7, 8, 11, 13, 14, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiu in view of Fan-Tastic Vent Model 4000R brochure (herein after 4000R) and further in view of the applicant's earlier patent (USPN 4,633,769) (herein after ('769)).

As set forth above Chiu discloses the invention substantially as claimed including and air circulation devise comprising a housing (12,14) having a front face portion (16), a rear face portion (17) and a main base portion (the four side walls 18, 19), the base having a motor and a fan blade. The air circulation devise is directed to a fan which can be selectively used as either a window fan or a free standing fan. As noted in the "Background of the invention" Chiu can be used in open windows and the design provides a safe and efficient means of mounting the fan in the window. Chiu does not disclose that the motor is a low profile motor with a thickness of around one inch, that the motor is sealed and has bearings, that the motor is a 12 volt DC motor, that the



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device excluding the motor and associated casing is made of a polymeric material and that the housing has a thickness of about three inches.

4000R discloses an air circulation device in the form of a 10 blade rotary fan that works with an open window (see col. 1 the second full paragraph), having a housing assembly with a motor and a fan blade (clearly shown in the figure). The motor is a 12 Volt sealed motor and the thickness of the assembly is 3.5 inches. 4000R does not specifically state that the motor is a thin low profile motor having a thickness of around 1 inch and that there are bearings. 4000R does make reference to the applicant's earlier Patent # 46333769. ('769) discloses a low profile motor (referred to as a disk motor 15). At col. 2 lines 45 thru 47 ('769) incorporates by reference U.S. Pat. No. 3,144,574 to Henry-Baudot. The Henry-Baudot reference, and thus the applicant's earlier patent ('769) by incorporation, discloses that the disk motor includes bearings (21, 21'). At col. 1 lines 60-64 ('769) notes that a reduced thickness assembly is desired. Further at col. 3 lines 23-25 ('769) notes that the "motor and fan blade require less than 2 ½ inches". Figure 2 of ('769) is included below and shows the view of the housing assembly, the motor and fan blade.

At the time of the invention it further would have been obvious to one of ordinary skill in the art, when reviewing the 4000R brochure, to refer to the ('769) patent in view of the clear reference to this patent on the brochure. Further upon review of the ('769) patent, which clearly discloses an air circulation device of similar construction to 4000R, it would have been obvious to substitute or use the sealed low-profile motor as the drive device for the fan as a well known reduced thickness motor. Additionally, it would have been obvious to one of ordinary skill in the art to make the motor of a thickness of "around 1 inch". As shown in Fig. 2 the motor and fan are around 2.5 inches and thus

the motor alone would have a greatly reduced thickness relative to 2.5 inches, on the order of "around 1 inch". The examiner notes that "it is well settled in the art that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art", In Re Aller, 105, USPQ 233 such that one of ordinary skill in the art would have been able to correctly size the thickness of the motor based on the power and space requirements of the 12 volt motor fitting within a reduced thickness. Similarly it would have been obvious to design the housing to have a thickness of about three inches (claim 19). As noted above 4000R has a thickness of about 3.5 inches. However that thickness includes the vent cap which would be unnecessary in the vertically oriented window or stand alone fan. Determining an optimum size, such as 3 inches, would have been obvious and within the skill level of one of ordinary skill in the art based upon safest and most efficient design for the window mounted fan of Chiu.

With regards to claim 1 the examiner notes that the sealed motor disclosed by 4000R and ('769) has the ability to perform the intended use limitation of the sealed motor "creating a liquid impermeable seal enabling.....while preventing corrosion and damage" .

With regards to claim 16 the applicant's previous patent ('769) sets forth in the paragraph spanning columns 1 and 2 that the device is formed of plastic. The examiner gives official notice that polymeric materials are well known plastic materials and it would have been obvious to one of ordinary skill in the art to form the housing elements of polymeric material in view of its durability and relative cheapness.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chiu in view of 4000R and further in view of the applicant's prior patent ('769) as applied to claim 13 above, and further in view of Schmider (USPN 5,109,171).

As set forth above Chiu in view of 4000R and further in view of the applicant's prior patent ('769) substantially discloses the invention. While each of 4000R and ('769) certainly disclose rigid casings neither specifically state that the casing is "of a rigid, non-corrosive material...". The applicant at paragraph [0019] line 3 of the current specification sets forth that such a material is metal. Schmider discloses a disk motor of similar construction to the Henry-Baudot patent incorporated by reference in ('769). Schmider at col. 1 lines 12-14 states that such disk motors are routinely enclosed by sheet metal. At the time of the invention it would have been obvious to use sheet metal as a well known and relatively cheap rigid and non-corrosive material for a motor housing.

#### ***Allowable Subject Matter***

Claims 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

In view of the appeal filed on January 4, 2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

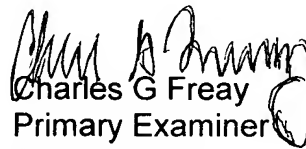
A handwritten signature in black ink, appearing to read "Ehud Gartenberg", with a long horizontal flourish extending to the right.

**EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
October 23, 2006